

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WALTER A. BERNARD, <i>et al.</i>	:	
	:	CIVIL ACTION
<i>Plaintiffs</i>	:	
	:	NO. 23-1463
v.	:	
	:	
HON. PHILLIP A. IGNELZI, <i>et al.</i>	:	
	:	
<i>Defendants</i>	:	

**JUDICIAL DEFENDANTS' MOTION TO DISMISS PLAINTIFFS'
SECOND AMENDED COMPLAINT**

NOW COME DEFENDANTS, the Honorable Philip A. Ignelzi and the Honorable Mary C. McGinley (“Judicial Defendants”), by and through their undersigned counsel, and file this Motion to Dismiss Plaintiffs’ Second Amended Complaint, averring in support thereof as follows:

1. Plaintiffs Walter and Wynton Bernard were defendants in a commercial landlord-tenant matter proceeding before the Allegheny County Court of Common Pleas. A Notice of Judgment against the federal Plaintiffs was sent out on July 24, 2020, and the Bernards’ subsequent Petition to Open or Strike Judgment, their appeal to the Pennsylvania Superior Court, and their Petition for Allowance of Appeal and Application for Reconsideration to the Pennsylvania Supreme Court were all unsuccessful. In sum, a judgment was entered against the

federal Plaintiffs in July 2020, and by December 20, 2022, that judgment had become absolute.

2. While the federal Plaintiffs' appeals were pending, post-judgment discovery in aid of execution was allowed to proceed. 9795 Perry Highway Management, LLC ("Landlord") served the federal Plaintiffs with written discovery requests, which the federal Plaintiffs studiously ignored. As a result, Landlord was forced to file numerous Motions for Sanctions against the federal Plaintiffs, all of which were granted. *See* Orders dated July 6, 2022; February 21, 2023; and April 27, 2023, attached as Exhibit "B." The Court's April 27, 2023 Order specifically stated that "[f]ailure to comply with this Order will result in both Walter Bernard and Wynton Bernard being held in Contempt of Court and being taken into custody by the Allegheny County Sheriff's Office and lodged at the Allegheny County Jail until such time as they purge themselves of Contempt."

3. Despite this clear warning, the discovery deadline came and went with no response from the federal Plaintiffs. In accordance with the Court's April 27, 2023 Order, the Allegheny County Sheriff's Office was sent to retrieve Plaintiffs on May 3, 2023. However, instead of having Plaintiffs lodged in the Allegheny County Jail, Judge Ignelzi ordered that Plaintiff Walter Bernard, who was acting as counsel for both himself and his brother, be brought to his courtroom.

4. Following a hearing at which Mr. Bernard was given the option to either answer Landlord's discovery requests or pay the outstanding judgment against him, the Court entered an Order giving Walter Bernard one final chance to provide the requested discovery before a warrant was issued for his arrest.

5. Again, the deadline for Plaintiffs' discovery responses passed without word from Plaintiffs. In keeping with the Court's May 4, 2023 Order, a warrant was issued for Walter Bernard's arrest. After evading law enforcement for several months, Walter Bernard was eventually apprehended on August 9, 2023, and a contempt hearing was scheduled for August 21, 2023.

6. After Walter Bernard's arrest but before his contempt hearing, Plaintiffs filed the present action seeking monetary damages plus injunctive and declaratory relief for Judge Ignelzi's alleged violation of their constitutional rights.

7. On August 18, 2023, Walter Bernard's counsel presented Defendant Judge Mary McGinley with an emergency petition that had been filed two days prior seeking Mr. Bernard's immediate release from incarceration. After reviewing the petition and speaking with Defendant Judge Ignelzi, Judge McGinley denied Mr. Bernard's emergency petition.

8. The contempt hearing before Judge Ignelzi took place on August 21, 2023, during which Walter Bernard agreed to settle the case by paying a portion of

the judgment against him. As such, the contempt was purged, and Mr. Bernard was released from incarceration.

9. On February 2, 2024, Plaintiffs filed the Second Amended Complaint that is currently before the Court.

10. As set forth more fully in the accompanying Brief, Plaintiffs' federal official capacity claims against Judicial Defendants are barred by the Eleventh Amendment.

11. When sued in their official capacities, Judicial Defendants are not "persons" under 42 U.S.C. § 1983.

12. Plaintiffs' state law claims are barred by sovereign immunity.

13. Plaintiffs' claims against Judicial Defendants are barred by the doctrine of absolute judicial immunity.

14. Plaintiffs' claims are barred by the *Younger* abstention doctrine.

15. Plaintiffs' request for injunctive relief is moot.

16. Plaintiffs' request for declaratory relief is improper.

17. Given the nature of the aforementioned defenses, leave to amend would be futile.

WHEREFORE, Judicial Defendants respectfully request that this Court enter an Order in the form attached hereto, dismissing Plaintiffs' Second Amended Complaint, with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on February 16, 2024, she personally caused to be served upon the following a true and correct copy of the foregoing *Motion to Dismiss and Brief in Support of the Motion* via CM/ECF to all counsel of record.

/s/Megan Mallek
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